

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES  
AND  
SHELBY COUNTY, TENNESSEE**

This Contract, by and between the State of Tennessee, DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES, hereinafter referred to as the "State," and Shelby County, Tennessee, hereinafter referred to as the "Procuring Party," is to establish agreed rates and ensure payment for the evaluations and treatment necessary to evaluations ordered pursuant to Tennessee Code Annotated (T.C.A.) Title 33, Chapter 7, Part 3, as further defined in the "SCOPE OF SERVICES."

Procuring Party Federal Employer Identification Number: 62-6000841

WHEREAS, T.C.A. Title 33, Chapter 7, Part 3 provides that, under the circumstances described therein, a general sessions, criminal, or circuit court may order a defendant, charged only with misdemeanor crimes, to undergo outpatient evaluation and treatment;

WHEREAS, the State facilitates and arranges for the provision of said outpatient evaluation and treatment;

WHEREAS, T.C.A. Title 33, Chapter 7, Part 3 provides that, under the circumstances described therein, a general sessions, criminal, or circuit court may order a defendant, charged only with misdemeanor crimes, to be placed in a hospital or treatment resource, as defined by T.C.A. § 33-1-101 for the purposes of evaluation and for treatment necessary to the evaluation;

WHEREAS, the State's Regional Mental Health Institutes (RMHIs) are such hospitals or treatment resources;

WHEREAS, courts handling cases arising out of or associated with the Procuring Party's jurisdiction (i.e., geographical boundaries) will from time to time order that a defendant charged only with misdemeanor crimes be evaluated and treated on an outpatient basis; and sometimes inpatient basis and receive treatment necessary to the evaluation, if inpatient, at one of the State's RMHIs;

WHEREAS, the Procuring Party is statutorily obligated in all such cases to pay the cost of outpatient and inpatient evaluation and treatment necessary to the evaluation;

WHEREAS, it is in the interest of the contracting parties to establish agreed upon rates for the cost of outpatient evaluations and treatment; and evaluations and treatment necessary to the evaluations, if inpatient, at the RMHIs and establish how said cost will be paid and a timeline for payment;

NOW, THEREFORE, in consideration of the foregoing facts and circumstances, the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by each of the parties, the State and Procuring Party hereby agree to the following:

**A. SCOPE OF SERVICES:**

A.1. The State shall have the following responsibilities and obligations under this Contract:

- a. When a court with appropriate jurisdiction orders the State to provide an evaluation and the treatment necessary to the evaluation of a criminal defendant charged only with misdemeanor crimes pursuant to and in accordance with T.C.A. Title 33, Chapter 7, Part 3, the State shall facilitate and arrange for the provision of outpatient evaluation and treatment and shall provide the inpatient evaluation and treatment services as needed.
- b. The State shall facilitate the provision of a report of the results of outpatient evaluations to the court when completed, and shall notify the court when inpatient evaluation and/or treatment ordered by the court is complete and the defendant is to be discharged and transferred back to the jurisdiction of the court.
- c. The State shall accept payment as specified in Section C. as payment in full for the evaluation and treatment necessary to the evaluation of a defendant charged only with misdemeanor crimes when said evaluation and treatment are ordered pursuant to T.C.A. Title 33, Chapter 7, Part 3.

A.2. The Procuring Party shall have the following responsibilities and obligations under this Contract:

- a. When a court with appropriate jurisdiction orders the State to provide an evaluation and the treatment necessary to the evaluation of a defendant charged only with misdemeanor crimes pursuant to and in accordance with T.C.A. Title 33, Chapter 7, Part 3, the Procuring Party for whom the court is acting shall pay the State for said evaluation and treatment as specified in Section C.
- b. When court approval or certification of the cost to be paid by the Procuring Party under this contract is required, the Procuring Party shall act in good faith and with diligence to facilitate the State's obtaining such court approval or certification.

**B. CONTRACT TERM:**

- B.1. This Contract shall be effective for the period commencing on July 1, 2009 and ending on June 30, 2010.
- B.2. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one (1) year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of an amendment. If the term extension necessitates a change in rates, such change shall also be effected through an amendment.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. The Procuring Party shall reimburse the State at the rates and increments listed below for a defendant charged only with misdemeanor crimes pursuant to the T.C.A. Code section listed below:

| Tennessee Code Annotated Section | Type of Service   | Amount   |
|----------------------------------|---|--|
| § 33-7-301(a)                    | Outpatient Competency to Stand Trial Evaluation   | \$300.00 per service recipient – all inclusive |
| § 33-7-301(a)                    | Outpatient Mental Condition at the Time of the Alleged Crime Evaluation                                     | \$300.00 per service recipient – all inclusive |
| § 33-7-301(a)                    | Both Outpatient Competency to Stand Trial and Mental Condition at the Time of the Alleged Crime Evaluations | \$600.00 per service recipient – all inclusive |

| <b>Tennessee Code Annotated Section</b>                 | <b>Type of Service</b>  | <b>Amount</b>                                  |
|---|---|--|
| § 33-7-301(a)   | Additional Mental Health Assessments in order to complete an outpatient evaluation under this part (must be authorized by State)  | \$100.00 per assessment                        |
| § 33-7-301(a)   | Physician Services utilized to complete an outpatient evaluation under this part (must be authorized by State)  | \$100.00 per service                           |
| § 33-7-301(a)   | Outpatient Competency to Stand Trial and/or Mental Condition at the Time of the Alleged Crime Evaluation for defendant housed in a Tennessee Department of Corrections (TDOC) facility located in a county served by the mental health center | \$700.00 per service recipient – all inclusive |
| § 33-7-301(a)(4)  | Outpatient Post-Conviction Competency to Proceed Evaluation (Must be authorized by State)   | \$300.00 per service recipient – all inclusive |
| § 33-7-301(a)(4)  | Outpatient Post-Conviction Mental Condition Evaluation  | \$300.00 per service recipient – all inclusive |
| § 33-7-301(a)(4)  | Outpatient Post-Conviction Mental Retardation Evaluation  | \$300.00 per service recipient – all inclusive |
| § 33-7-301(a)   | Inpatient Evaluation and Treatment at a Regional Mental Health Institute (RMHI)   | \$450.00 per service recipient per day         |
| § 33-7-301(b)   | Inpatient Evaluation and Treatment at an RMHI   | \$450.00 per service recipient per day         |
| § 33-7-303(a)   | Outpatient Committability of Insanity Acquittee Evaluation in accordance with Commitment Criteria of T.C.A. Title 33, Chapter 6, Part 5   | \$600.00 per service recipient – all inclusive |
| § 33-7-303(a)   | Completion of Outpatient Treatment Plan for Insanity Acquittee Considered Not Committable [with or without Mandatory Outpatient Treatment (MOT) under T.C.A. § 33-7-303(b)]   | \$300.00 per service recipient – all inclusive |
| § 33-7-303(a) [Court Order entered before July 1, 2009] | Inpatient Evaluation and Treatment at an RMHI   | \$450.00 per service recipient per day         |
| § 33-7-303(c)   | Inpatient Evaluation and Treatment at an RMHI   | \$450.00 per service recipient per day         |

- C.2. For inpatient evaluation and treatment, the Procuring Party shall be responsible for paying the daily rate to the State for the day a defendant charged with misdemeanor crimes only is admitted, herein “date of admission,” and each day between the date of admission and the day the defendant is discharged, herein “date of discharge.” The Procuring Party shall not be responsible for paying the daily rate for the date of discharge. For purposes of this Contract, the date of discharge shall be the date that the Procuring Party or the Procuring Party’s transportation agent actually removes the defendant from the State’s grounds.

- C.3. Procuring Party shall pay the State within thirty (30) calendar days after receiving an invoice from the State. If at the end of thirty (30) calendar days, the Procuring Party has not paid the invoice, the State shall issue a second invoice, and shall continue sending invoices at thirty (30) calendar day increments until reaching one hundred and twenty (120) calendar days for which the invoice remains unpaid. If the invoice remains unpaid at the end of the one hundred and twenty (120) day period, the State shall initiate collection efforts or refer the issue to the Tennessee Attorney General's Office.
- C.4. In the event that the State must procure interpreter services from non-state resources under court order or in order to effect an inpatient evaluation or treatment necessary to the evaluation, the Procuring Party shall reimburse the State the actual cost of the interpreter services.
- C.5. When a court with appropriate jurisdiction orders the State to provide an evaluation and the treatment necessary to the evaluation of a defendant charged only with misdemeanor crimes pursuant to and in accordance with T.C.A. Title 33, Chapter 7, Part 3; and the court finds the defendant financially able to pay for, and be responsible for, all or part of the costs and expenses for the evaluation and treatment, the Procuring Party shall pay the State the cost of the evaluation and treatment and seek reimbursement from the defendant. At no time shall the State seek payment directly from the defendant.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least Thirty (30) days before the effective date of termination. Said termination shall not be deemed a Breach of Contract by the State. Should the State exercise this provision, the State shall have no liability to the Procuring Party. Should either the State or the Procuring Party exercise this provision, the Procuring Party shall be required to compensate the State for satisfactory, authorized services completed as of the termination date and shall have no liability to the State except for those units of service which can be effectively used by the Procuring Party. The final decision, as to what these units of service are, shall be determined by the State. In the event of disagreement, the Procuring Party may file a claim with the Tennessee Claims Commission in order to seek redress.
- Upon such termination, the Procuring Party shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If either party fails to properly perform or fulfill its obligations under this Contract in a timely or proper manner or violates any terms of this Contract, the other party shall have the right to immediately terminate the Contract. The Procuring Party shall compensate the State for completed services.
- D.5. Subcontracting. Neither the Procuring Party nor the State shall assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the other. If such subcontracts are approved, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings).

- D.6. Conflicts of Interest. The Procuring Party warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Procuring Party in connection with any work contemplated or performed relative to this Contract other than as required by Section A. of this Contract.
- D.7. Nondiscrimination. The State and the Procuring Party hereby agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the State or the Procuring Party on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law.
- D.8. Records. The Procuring Party shall maintain documentation for its transactions with the State under this Contract. The books, records, and documents of the Procuring Party, insofar as they relate to work performed or money paid under this Contract, shall be maintained for a period of three (3) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.10. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- D.11. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.12. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.13. State and Federal Compliance. The Procuring Party and the State shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.14. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Procuring Party agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Procuring Party acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D.16. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.17. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Jeffery Feix, Ph.D, Director of Forensics Services  
Department of Mental Health and Developmental Disabilities  
425 5th Avenue North  
3rd Floor, Cordell Hull Building  
Nashville, Tennessee 37243  
[jeff.feix@tn.gov](mailto:jeff.feix@tn.gov)  
Telephone # (615) 532-6747  
FAX # (615) 253-3045

The Procuring Party:

A. C. Wharton, Shelby County Mayor  
Shelby County, TN  
160 N. Main Street, Suite 850  
Memphis, TN 38103  
[acwharton@shelbycountyttn.gov](mailto:acwharton@shelbycountyttn.gov)  
Telephone # 901.545.4500  
FAX # 901.545.4759

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Precedence. Both Parties to this Contract acknowledge that the relevant sections of Tennessee Code Annotated, Title 33, along with rules and policies and procedures issued in accordance therewith, shall take precedence over any conflicting terms of the court order.

- E.4. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Procuring Party by the State or acquired by the Procuring Party on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Procuring Party to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Procuring Party's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Procuring Party of this Contract; previously possessed by the Procuring Party without written obligations to the State to protect it; acquired by the Procuring Party without written restrictions against disclosure from a third party which, to the Procuring Party's knowledge, is free to disclose the information; independently developed by the Procuring Party without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Procuring Party to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Procuring Party due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.5. HIPAA Compliance. The State and Procuring Party shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- a. Procuring Party warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
- b. Procuring Party warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- c. The State and the Procuring Party will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Procuring Party in compliance with HIPAA. This provision shall not apply if information received by either party under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits either party to receive such information without entering into a business associate agreement or signing another such document.

- E.6. Rule 2 Compliance. The State and the Procuring Party shall comply with obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR § 2.1 et seq.

- a. The Procuring Party warrants to the State that it is familiar with the requirements of Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations, and will comply with all applicable requirements in the course of this Contract.
- b. The Procuring Party warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its regulations, in the

course of performance of the Contract so that both parties will be in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records.

- c. The State and the Procuring Party will sign documents, including but not limited to business associate agreements, as required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and that are reasonably necessary to keep the State and the Procuring Party in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient records. This provision shall not apply if information received by either party under this Contract is NOT "protected health information" as defined by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, or if Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records permits either party to receive such information without entering into a business associate agreement or signing another such document.

**IN WITNESS WHEREOF:**

**SHELBY COUNTY, TENNESSEE:**

---

**JOE FORD, INTERIM MAYOR**

**DATE**

**DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES:**

---

**VIRGINIA TROTTER BETTS, MSN, JD, RN, FAAN, COMMISSIONER**

**DATE**